

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LADRINA Y. DAVIS.

Plaintiff,

V.

NANCY A BERRYHILL, Deputy
Commissioner of Social Security for
Operations,

Defendant.

CASE NO. 2:17-CV-01552-DWC

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of

Defendant's denial of her applications for supplemental security income ("SSI") and disability insurance benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge (“ALJ”) erred when she failed to provide specific, legitimate reasons supported by substantial evidence for giving little weight to the medical opinions of Drs. Chinyere Obimba, Arthur Davis, and

ORDER REVERSING AND REMANDING
DEFENDANT'S DECISION TO DENY BENEFITS

1 Kathleen Andersen. Had the ALJ properly considered the opinions of these three doctors, the
2 residual functional capacity (“RFC”) may have included additional limitations. The ALJ’s errors
3 are therefore not harmless, and this matter is reversed and remanded pursuant to sentence four of
4 42 U.S.C. § 405(g) to the Deputy Commissioner of Social Security (“Commissioner”) for further
5 proceedings consistent with this Order.

6 FACTUAL AND PROCEDURAL HISTORY

7 On July 29, 2011, Plaintiff filed applications for DIB and SSI, alleging disability as of
8 May 27, 2010. *See* Dkt. 9, Administrative Record (“AR”) 60, 312, 881 (Plaintiff amended her
9 disability onset date from May 28, 2011 to May 27, 2010 at the first ALJ hearing). The
10 applications were denied upon initial administrative review and on reconsideration. *See* AR 881.
11 On May 1, 2013, ALJ Ilene Sloan found Plaintiff not disabled. AR 32-49, 881. The Appeals
12 Council denied Plaintiff’s administrative appeal, making the ALJ’s opinion the final decision of
13 the Commissioner. *See* AR 1-4; 20 C.F.R. § 404.981, § 416.1481. Plaintiff appealed to the
14 United States District Court for the Western District of Washington, which remanded the case
15 for further proceedings. *See* AR 989-1002; *Davis v. Colvin*, 2:14-CV-1484-RSM-JPD (W.D.
16 Wash.).

17 On remand, Plaintiff received a second hearing before ALJ Sloan, who again found
18 Plaintiff not disabled. AR 881-97, 908-45. Plaintiff did not request review of the ALJ’s decision
19 by the Appeals Council, making the ALJ’s June 21, 2017 decision the final decision of the
20 Commissioner. *See* AR 879. Plaintiff now appeals the ALJ’s June 21, 2017 decision finding
21 Plaintiff not disabled.¹

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24 ¹ When stating “the ALJ” or “the ALJ’s decision” throughout this Order, the Court is referring to the ALJ’s
June 21, 2017 decision.

1 In the Opening Brief, Plaintiff maintains the ALJ erred by failing to: (1) properly
2 consider the medical opinion evidence; and (2) provide clear and convincing reasons for
3 discounting Plaintiff's subjective symptom testimony. Dkt. 13, p. 1. Plaintiff requests the Court
4 remand this case for an award of benefits. *Id.* at p. 18.

5 STANDARD OF REVIEW

6 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
7 social security benefits if the ALJ's findings are based on legal error or not supported by
8 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
9 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

10 DISCUSSION

11 **I. Whether the ALJ properly considered the medical opinion evidence.**

12 Plaintiff contends the ALJ erred in her evaluation of the medical opinions of Drs.
13 Chinyere Obimba, M.D., Arthur Davis, Ph.D., and Kathleen Andersen, M.D., and Physician's
14 Assistant Jeannie Chang. Dkt. 13, pp. 9-18.

15 *A. Acceptable Medical Sources*

16 Plaintiff first asserts the ALJ failed to provide specific and legitimate reasons supported
17 by substantial evidence for discounting the medical opinions of Drs. Obimba, Davis, and
18 Andersen. Dkt. 13, pp. 9-13, 14-19.

19 The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted
20 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
21 1996) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d
22 502, 506 (9th Cir. 1990)). When a treating or examining physician's opinion is contradicted, the
23 opinion can be rejected "for specific and legitimate reasons that are supported by substantial
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1 evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035,
2 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can
3 accomplish this by “setting out a detailed and thorough summary of the facts and conflicting
4 clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157
5 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

6 1. Dr. Obimba

7 On February 1, 2016, Plaintiff’s treating physician, Dr. Obimba, wrote a letter stating
8 Plaintiff was unable to work at that time due to an inability to control her pain. AR 1778-79. She
9 opined it would take Plaintiff one to two years to control her impairments to the point she could
10 return to work. AR 1778.

11 Dr. Obimba also wrote a letter and completed a Medical Assessment of Ability to do
12 Work-Related Activities (Physical) and a Mental Impairment Questionnaire on December 15,
13 2016. AR 1911-17. Dr. Obimba opined that Plaintiff’s fibromyalgia, asthma, anxiety, and
14 depression caused functional limitations. AR 1911-17. She found Plaintiff had the following
15 limitations:

16 • Plaintiff can lift less than ten pounds occasionally;
17 • Plaintiff can stand two to four hours in an eight hour day;
18 • Plaintiff can sit, so long as she can periodically alternate between sitting and
19 standing;
20 • Plaintiff is unable to walk more than two to four hours at a time for any
21 employment;
22 • Plaintiff would not be able to work with chemicals, dust, or fumes;
23 • Plaintiff’s impairments restrict her ability to push, pull, reach, feel, hear, and
24 speak;
25 • Plaintiff can occasionally climb and handle, but can never balance, stoop, crouch,
26 kneel, or crawl;
27 • Plaintiff’s mental impairments worsen her physical pain and make it difficult for
28 her to concentrate and communicate effectively.

1 AR 1911-15. Overall, Dr. Obimba opined that Plaintiff would be unable to keep pace in
2 employment above a maximum of two hours and would not be able to work for two consecutive
3 days in a row. AR 1912.

4 The ALJ assigned little weight to Dr. Obimba's opinions because the opinions: (1) "are
5 inconsistent with the objective clinical findings, the claimant's longitudinal treatment history,
6 and her performance on physical and mental examinations;" (2) did not provide specific
7 functional limitations; (3) are conclusory; (4) infringe on an issue reserved to the Commissioner;
8 and (5) are based, in part, on Plaintiff's self-reports. AR 892-95.

9 First, the ALJ stated Dr. Obimba's opinions "are inconsistent with the objective clinical
10 findings, the claimant's longitudinal treatment history, and her performance on physical and
11 mental examinations." AR 894. An ALJ need not accept an opinion which is inadequately
12 supported "by the record as a whole." *Batson v. Commissioner of Soc. Sec. Admin.*, 359 F.3d
13 1190, 1195 (9th Cir. 2004). However, "an ALJ errs when he rejects a medical opinion or assigns
14 it little weight while doing nothing more than ignoring it, asserting without explanation that
15 another medical opinion is more persuasive, or criticizing it with boilerplate language that fails
16 to offer a substantive basis for his conclusion." *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th
17 Cir. 2014) (citing *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir.1996)). As the Ninth Circuit
18 has stated:

19 To say that medical opinions are not supported by sufficient objective findings or
20 are contrary to the preponderant conclusions mandated by the objective findings
21 does not achieve the level of specificity our prior cases have required, even when
the objective factors are listed *seriatim*. The ALJ must do more than offer his
conclusions. He must set forth his own interpretations and explain why they,
rather than the doctors', are correct.

22 *Embrey*, 849 F.2d at 421-22 (internal footnote omitted).
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1 Here, the ALJ provided a list of medical records detailing Plaintiff's medical treatment
2 and testing. *See* AR 894. The ALJ, however, failed to provide her interpretation of the evidence
3 and did not provide any explanation as to how Dr. Obimba's opinions were contradicted by the
4 cited evidence. *See* AR 894. Without more, the ALJ has failed to meet the level of specificity
5 required, and the ALJ's conclusory finding that Dr. Obimba's opinions "are inconsistent with the
6 objective clinical findings, the claimant's longitudinal treatment history, and her performance on
7 physical and mental examinations" not sufficient to discount the opinions. *See Embrey*, 849 F.2d
8 at 421 (an ALJ cannot merely state facts the ALJ claims "point toward an adverse conclusion and
9 make[] no effort to relate any of these objective factors to any of the specific medical opinions
10 and findings he rejects").²

11 Second, the ALJ discounted Dr. Obimba's opinions because the opinions did not contain
12 specific functional limitations. AR 895. The ALJ failed to provide any explanation for this
13 finding. *See* AR 895; *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) ("We require the
14 ALJ to build an accurate and logical bridge from the evidence to her conclusions so that we may
15 afford the claimant meaningful review of the SSA's ultimate findings."). Further, as discussed
16 above, Dr. Obimba opined that Plaintiff had very specific functional limitations, including, but
17 not limited to, sitting, standing, walking, lifting, carrying, climbing, stooping, bending, kneeling,
18 crouching, crawling, and balancing. AR 1911-17. Dr. Obimba also found Plaintiff's mental
19 health impairments limited her ability to concentrate and communicate effectively. AR 1911-17.
20 The ALJ fails to explain how Dr. Obimba's opinions lack functional limitations and the ALJ's
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22 ² The Court also notes records cited to by the ALJ are not inconsistent with Dr. Obimba's opinions. For
23 example, in discounting Dr. Obimba's opinions the ALJ noted Plaintiff was continuing to improve with acupuncture
24 and was reducing her pain medication. AR 894. These findings are consistent with Dr. Obimba's opinions, wherein
Dr. Obimba acknowledged Plaintiff was exercising, receiving relief and increased functioning with acupuncture, and
tapering off her pain medication, but found Plaintiff was still unable to work. AR 1778.

1 finding is contradicted by the record. Therefore, the ALJ's second reason for assigning little
2 weight to Dr. Obimba's opinions is not legitimate, nor supported by substantial evidence.

3 Third, the ALJ discounted Dr. Obimba's opinions because "the assessments were
4 conclusory." An ALJ need not accept an opinion "if that opinion is brief, conclusory, and
5 inadequately supported by clinical findings." *Batson*, 359 F.3d at 1195; *Bayliss*, 427 F.3d at
6 1216; *see Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). Here, however, Dr.
7 Obimba provided detailed opinions. She provided written letters explaining her opinion and she
8 attached medical assessment forms detailing Plaintiff's limitations. *See* AR 1778-79, 1911-17.
9 Furthermore, a treating physician's check-box form cannot be rejected if the opinion is supported
10 by treatment notes. *Esparze v. Colvin*, 631 Fed. App'x 460, 462 (9th Cir. 2015). Dr. Obimba is
11 Plaintiff's treating physician and the record contains treatment notes and objective testing from
12 the clinic where Dr. Obimba practices. *See* AR 378-458, 476-93, 497-557, 1413-1535, 1538-41,
13 1749-77. As Dr. Obimba provided detailed reasons supporting her opinions and as the treatment
14 notes from the clinic where she practices were included in the record, the ALJ's third reason for
15 discounting Dr. Obimba's opinions is not valid.

16 Fourth, the ALJ assigned little weight to Dr. Obimba's opinions because the opinions
17 infringed on an issue reserved for the Commissioner. AR 895. According to the Ninth Circuit,
18 "physicians may render medical, clinical opinions, or they may render opinions on the ultimate
19 issue of disability - the claimant's ability to perform work." *Garrison v. Colvin*, 759 F.3d 995,
20 1012 (9th Cir. 2014) (quoting *Reddick*, 157 F.3d at 725). A doctor's statement that a claimant
21 "would be 'unlikely' to work full time" was not a finding on an issue reserved to the
22 Commissioner, and is "instead an assessment, based on objective medical evidence, of [the

1 claimant's] *likelihood* of being able to sustain fulltime employment[.]” *Hill v. Astrue*, 698 F.3d
2 1153, 1160 (9th Cir. 2012) (emphasis in original).

3 In this case, Dr. Obimba found that, in light of Plaintiff's impairments and functional
4 limitations, Plaintiff was unable to sustain full-time employment. *See* AR 1911-12. Dr. Obimba
5 further explained Plaintiff would not be able to work for two consecutive days because of her
6 impairments. AR 1912. After reviewing Dr. Obimba's opinions, the Court concludes Dr.
7 Obimba's opinions were an assessment, based on her relationship with Plaintiff, of Plaintiff's
8 likelihood of being able to maintain employment. Therefore, the ALJ's fourth reason for giving
9 little weight to Dr. Obimba's opinions is not specific and legitimate. *See Reddick*, 157 F.3d at
10 725 (quoting *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993) (other citations omitted))
11 (Although ““the administrative law judge is not bound by [] opinions of the claimant's
12 physicians on the ultimate issue of disability,” she cannot reject an opinion on disability without
13 presenting specific and legitimate reasons supported by substantial evidence).

14 Fifth, the ALJ assigned little weight to Dr. Obimba's opinions because the opinions were
15 based, in part, on Plaintiff's self-reports. AR 895. An ALJ may reject a physician's opinion “if it
16 is based ‘to a large extent’ on a claimant's self-reports that have been properly discounted as
17 incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (quoting *Morgan v.*
18 *Comm'r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)). This situation is distinguishable
19 from one in which the doctor provides his own observations in support of his assessments and
20 opinions. *See Ryan v. Comm'r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008)
21 (“an ALJ does not provide clear and convincing reasons for rejecting an examining physician's
22 opinion by questioning the credibility of the patient's complaints where the doctor does not
23 discredit those complaints and supports his ultimate opinion with his own observations”); *see*
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1 also *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001). “[W]hen an opinion is not more
2 heavily based on a patient’s self-reports than on clinical observations, there is no evidentiary
3 basis for rejecting the opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing
4 *Ryan*, 528 F.3d at 1199-1200).

5 The ALJ provides no explanation for why she finds Dr. Obimba’s opinions are based, in
6 part, on Plaintiff’s self-reports. See AR 895. She also does not find the opinions are based “to a
7 large extent” on Plaintiff’s self-reports. See AR 895; *Tommasetti*, 533 F.3d at 1041 (opinion
8 must be based “to a large extent” on self-reports to be rejected). In reaching her opinions, Dr.
9 Obimba noted she had been Plaintiff’s primary care provider for three years, recognized
10 Plaintiff’s treatment and medications, and the record contains treatment notes and objective
11 testing from the medical clinic where Dr. Obimba practices. There is no indication from the
12 record that Dr. Obimba based her opinion “to a large extent” on Plaintiff’s self-reports. As the
13 ALJ has not properly explained how Dr. Obimba’s opinions are based “to a large extent” on
14 Plaintiff’s self-reports, the Court finds this is not a specific and legitimate reason supported by
15 substantial evidence for giving little weight to Dr. Obimba’s opinions. See *Ghanim*, 763 F.3d
16 1162 (finding the ALJ did not provide a specific and legitimate reason for discounting a doctors’
17 opinions when the ALJ offered no basis for his conclusion that the opinions were based more
18 heavily on claimant’s self-reports and substantial evidence does not support such a conclusion).

19 For the above stated reasons, the Court concludes the ALJ failed to provide specific,
20 legitimate reasons supported by substantial evidence for assigning little weight to Dr. Obimba’s
21 opinions. Accordingly, the ALJ erred.

22 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*, 674
23 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the
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1 claimant or “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v.*
2 *Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674
3 F.3d at 1115. The Ninth Circuit has stated ““a reviewing court cannot consider an error harmless
4 unless it can confidently conclude that no reasonable ALJ, when fully crediting the testimony,
5 could have reached a different disability determination.”” *Marsh v. Colvin*, 792 F.3d 1170, 1173
6 (9th Cir. 2015) (quoting *Stout*, 454 F.3d at 1055-56). The determination as to whether an error is
7 harmless requires a “case-specific application of judgment” by the reviewing court, based on an
8 examination of the record made ““without regard to errors’ that do not affect the parties’
9 ‘substantial rights.’” *Molina*, 674 F.3d at 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396,
10 407 (2009)).

11 Had the ALJ given great weight to Dr. Obimba’s opinions, the ALJ may have found
12 Plaintiff disabled or included additional limitations in the RFC. For example, Dr. Obimba found
13 Plaintiff was unable to sustain full-time employment and would not be able to work two
14 consecutive days in a row. AR 1912. The ALJ found there were jobs in the national economy
15 Plaintiff can perform. *See* AR 895-97. The ALJ also did not find Plaintiff was limited in her
16 ability to attend work. *See* AR 887. Therefore, if Dr. Obimba’s opinions were given great weight,
17 the ultimate disability determination may have changed. Accordingly, the ALJ’s errors are not
18 harmless and require reversal.

19 2. Dr. Davis

20 Dr. Davis, a psychologist who examined Plaintiff on a few occasions, wrote Plaintiff a
21 letter with attached medical records on January 21, 2011. AR 866-74. Dr. Davis diagnosed
22 Plaintiff with major depression, recurrent, and pain disorder with probable borderline
23 personality disorder. AR 867. He noted the disabling nature of Plaintiff’s difficulties was made
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1 more obvious by Plaintiff's behavior of visiting Dr. Davis's office during another patient's
2 appointment. AR 867. Dr. Davis also found some of Plaintiff's inability to remain compliant
3 with appointments was due to her psychological difficulties. AR 867. He opined Plaintiff's
4 global assessment of functioning ("GAF") score was 50. AR 867.

5 The ALJ assigned little weight to Dr. Davis's opinion because the opinion is: (1)
6 "inconsistent with the objective clinical findings, the claimant's longitudinal treatment history,
7 and her performance on physical and mental examinations;" and (2) based, in part, on Plaintiff's
8 self-reports. AR 892-95.

9 First, as with Dr. Obimba, the ALJ stated Dr. Davis's opinion is "inconsistent with the
10 objective clinical findings, the claimant's longitudinal treatment history, and her performance on
11 physical and mental examinations." AR 894.³ As the Court explained above, an ALJ need not
12 accept an opinion which is inadequately supported by the record or inconsistent with the record.
13 See *Batson*, 359 F.3d at 1195. However, a conclusory finding by the ALJ is insufficient to reject
14 the opinion. See *Embrey*, 849 F.2d at 421-22. In this case, the ALJ simply offered her conclusion
15 that the records were inconsistent with Dr. Davis's opinion and then provided a list of medical
16 evidence. See AR 894. The ALJ failed to provide her interpretation of the evidence and did not
17 provide any explanation as to how Dr. Davis's opinion was contradicted by the cited evidence.
18 See AR 894. Without more, the ALJ has failed to meet the level of specificity required, and the
19 ALJ's conclusory finding that Dr. Davis's opinion is "inconsistent with the objective clinical
20 findings, the claimant's longitudinal treatment history, and her performance on physical and
21 mental examinations" not sufficient to discount the opinion. See *Garrison*, 759 F.3d at 1012-13.

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23 ³ The ALJ provided this same reason for discounting the opinions of Drs. Obimba, Davis, and Andersen,
24 and Ms. Chang. See AR 894. The ALJ stated she was discounting the opinions of several medical professionals for
this reason and then provided the listed medical records to support her conclusory statement. See AR 894.

1 Second, the ALJ discounted Dr. Davis's opinion because it was based, in part, on
2 Plaintiff's self-reports. AR 894. As with the first reason, the ALJ provided this second reason in
3 a single sentence to discount the opinions of Drs. Obimba, Davis, Andersen, and Ms. Chang. AR
4 895. As stated above, an ALJ may reject a physician's opinion "if it is based 'to a large extent'
5 on a claimant's self-reports that have been properly discounted as incredible." *Tommasetti*, 533
6 F.3d at 1041. The ALJ again provides no explanation for why she finds Dr. Davis's opinion is
7 based, in part, on Plaintiff's self-reports. *See* AR 895. She also does not find the opinion as based
8 "to a large extent" on self-reports. *See* AR 895. Further, in reaching his opinion, Dr. Davis
9 reviewed Plaintiff's medical history, observed Plaintiff, and conducted a psychological interview
10 and MMPI-2⁴ examination. *See* AR 886-74. Dr. Davis did not discredit Plaintiff's subjective
11 reports, and supported his ultimate opinion with personal observations, a psychological
12 interview, and objective testing. The Court finds Dr. Davis's opinion was not more heavily based
13 on Plaintiff's self-reports. As the ALJ's finding was conclusory and as Dr. Davis's opinion was
14 not more heavily based on Plaintiff's self-reports, the ALJ's second reason for discounting Dr.
15 Davis's opinion is not specific and legitimate and supported by substantial evidence. *See Buck v.*
16 *Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (finding a clinical interview and mental status
17 evaluation are objective measures and cannot be discounted as a "self-report").

18 The Court concludes the two reasons provided by the ALJ for assigning little weight to
19 Dr. Davis's opinion are not specific and legitimate and supported by substantial evidence.
20 Accordingly, the ALJ erred in her consideration of Dr. Davis's opinion. Had the ALJ properly
21 considered Dr. Davis's opinion, the RFC and hypothetical question posed to the vocational
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24 ⁴ The Minnesota Multiphasic Personality Inventory -2 ("MMPI-2") is a psychological test that assesses
personality traits and psychopathology.

1 expert may have included additional limitations, such as absenteeism. As the ultimate disability
2 decision may have changed, the ALJ's error is not harmless. *See Molina*, 674 F.3d at 1115.

3 3. Dr. Andersen

4 Dr. Andersen, a consultative examining psychiatrist, completed two psychiatric reports
5 regarding Plaintiff. AR 1404-12, 1742-48. In the first report, completed on January 13, 2015, Dr.
6 Andersen diagnosed Plaintiff with depressive disorder, not otherwise specified ("NOS"), anxiety
7 disorder, NOS, pain disorder associated with psychological factors and medical conditions, and
8 marijuana abuse. AR 1747. Dr. Andersen opined that, if Plaintiff found employment, there would
9 be a great deal of absenteeism due to pain complaints. AR 1748. She also found Plaintiff would
10 report marked difficulty focusing on tasks and completing tasks related to the intrusion of her
11 pain, she would be inconsistent in her ability to appropriately participate in relations with others
12 in the workplace, and her stress tolerance would be markedly reduced. AR 1748.

13 On January 21, 2016, Dr. Andersen completed the second psychiatric report. AR 1404-
14 12. She again diagnosed Plaintiff with unspecified depressive disorder, unspecified anxiety
15 disorder, somatic symptom disorder with predominant pain, and marijuana abuse. AR 1408. Dr.
16 Andersen found Plaintiff was in optimal mental health treatment and had no other
17 recommendations for treatment. AR 1409. She stated her recommendations were essentially the
18 same as the previous evaluation. AR 1409.

19 Dr. Andersen opined Plaintiff would have absenteeism related to pain, difficulty focusing
20 on tasks and completing tasks in a timely fashion, and her preoccupation with her pain
21 experience would likely predominate in interactions with others in the workplace. AR 1409. Dr.
22 Andersen found Plaintiff moderately limited in her ability to understand and remember complex
23 instructions, carry out complex instructions, interact appropriately with the public, and respond
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1 appropriately to usual work situations and changes in a routine work setting. AR 1410-11. She
2 also found Plaintiff has mild limitations in her ability to carry out simple instructions, make
3 judgments on complex work-related decisions, and interact appropriately with supervisors and
4 co-workers. AR 1410-11.

5 The ALJ assigned little weight to Dr. Andersen's opinions because the opinions: (1) "are
6 inconsistent with the objective clinical findings, the claimant's longitudinal treatment history,
7 and her performance on physical and mental examinations;" (2) are equivocal; and (3) relied on
8 Plaintiff's self-reports. AR 892-95.

9 First, the ALJ discounted Dr. Andersen's opinions because the opinions "are inconsistent
10 with the objective clinical findings, the claimant's longitudinal treatment history, and her
11 performance on physical and mental examinations." AR 894. As the Court has explained, in this
12 case, the ALJ has not adequately explained how the cited evidence is inconsistent with the
13 medical opinions the evidence is being used to discount. *See Section I.A.1 & 2, supra.* While the
14 ALJ referenced Dr. Andersen's findings in the evidence, she provided no explanation linking her
15 conclusion that the evidence is inconsistent with Dr. Andersen's opinions to Dr. Andersen's
16 opinions. As with Drs. Obimba and Davis, the ALJ's first reason for discounting Dr. Andersen's
17 opinions is conclusory and insufficient.

18 Second, the ALJ stated Dr. Andersen's "opinion is equivocal and does not define the
19 most the claimant can do." AR 895. Dr. Andersen completed a Medical Source Statement,
20 wherein she found Plaintiff would have mild to moderate functional limitations as a result of her
21 depressive disorder, anxiety disorder, and pain experiences. AR 1410-11. Dr. Andersen also
22 found Plaintiff would have absenteeism, if she were employed, and noted difficulties in
23 concentration and pace. AR 1409, 1748. The ALJ fails to explain how these limitations are

1 equivocal. AR 895. Further, the Court finds these limitations can be included in an RFC
2 assessment. Therefore, the ALJ's second reason for giving little weight to Dr. Andersen's
3 opinions is not specific and legitimate and supported by substantial evidence.

4 Third, the ALJ discounted Dr. Andersen's opinions because the opinions were based on
5 Plaintiff's self-reports. AR 895. The ALJ found that, "[w]hile Dr. Andersen noted that the
6 claimant was focused on her pain issues, other records indicate that she was focused on getting
7 Social Security benefits, which would necessitate her being focused on pain issues so that it was
8 documented." AR 895. The ALJ also stated that "Dr. Andersen relied on the claimant's
9 subjective complaints, which are inconsistent with the majority of her longitudinal treatment
10 records and her daily activities." AR 895.

11 Initially, the Court finds the ALJ's third reason for discounting Dr. Andersen's opinions
12 is conclusory. The ALJ fails to cite to any records supporting her assertion that Plaintiff was
13 deceptive regarding her pain or that her complaints were inconsistent with the longitudinal
14 treatment records and her daily activities. *See* AR 895. As the ALJ did not adequately explain or
15 support her findings, this is not a sufficient reason to discount Dr. Andersen's opinions. *See*
16 *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("the agency [must] set forth the
17 reasoning behind its decisions in a way that allows for meaningful review"); *Blakes*, 331 F.3d at
18 569.

19 Furthermore, in reaching her opinions, Dr. Andersen conducted clinical interviews,
20 observed Plaintiff, and conducted mental status examinations. *See* AR 1404-12, 1742-48. Dr.
21 Andersen did not discredit Plaintiff's subjective reports, including her pain reports, and
22 supported her ultimate opinions with objective testing, personal observations, and clinical
23 interviews. The Court finds Dr. Andersen's opinions were not more heavily based on Plaintiff's
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1 self-reports. Therefore, the ALJ's third reason for giving little weight to Dr. Andersen's opinions
2 is not specific and legitimate and supported by substantial evidence. *See Buck*, 869 F.3d at 1049.

3 The Court concludes the three reasons provided by the ALJ for assigning little weight to
4 Dr. Andersen's opinions are not specific and legitimate and supported by substantial evidence.
5 Accordingly, the ALJ erred in her consideration of Dr. Andersen's opinions. Had the ALJ
6 properly considered Dr. Andersen's opinions, the RFC and hypothetical question posed to the
7 vocational expert may have included additional mental limitations. As the ultimate disability
8 decision may have changed, the ALJ's error is not harmless. *See Molina*, 674 F.3d at 1115.

9 **B. Other Medical Sources**

10 Plaintiff also argues the ALJ failed to properly consider the opinions of Ms. Chang,
11 Plaintiff's treating physician's assistant. Dkt. 13, pp. 13-14. The Court concludes the ALJ
12 committed harmful error in assessing the opinions of Drs. Obimba, Davis, and Andersen and this
13 case must be remanded for further consideration of the medical evidence. *See Section I.A.*,
14 *supra*. As this case must be remanded, the Court declines to consider whether the ALJ erred in
15 consideration of Ms. Chang's opinions. Rather, the Court finds the ALJ should re-evaluate all the
16 medical opinion evidence, including Ms. Chang's opinions, on remand.

17 **II. Whether the ALJ provided proper reasons for discounting Plaintiff's
18 subjective symptom testimony.**

19 Plaintiff contends the ALJ failed to give clear and convincing reasons for rejecting
20 Plaintiff's testimony about her symptoms and limitations. Dkt. 13, pp. 3-9. The Court concludes
21 the ALJ committed harmful error in assessing the medical opinion evidence and must re-evaluate
22 all the medical opinion evidence on remand. *See Section I, supra*. Because the ALJ's
23 reconsideration of the medical evidence may impact her assessment of Plaintiff's subjective
24 testimony, on remand, the ALJ must reconsider Plaintiff's subjective testimony.

1 **III. Whether the case should be remanded for an award of benefits.**

2 Plaintiff argues this matter should be remanded with a direction to award benefits. *See*
3 Dkt. 13, p. 18. The Court may remand a case “either for additional evidence and findings or to
4 award benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the
5 Court reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand
6 to the agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587,
7 595 (9th Cir. 2004) (citations omitted). However, the Ninth Circuit created a “test for
8 determining when evidence should be credited and an immediate award of benefits directed[.]”
9 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). Specifically, benefits should be awarded
10 where:

11 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
12 claimant’s] evidence, (2) there are no outstanding issues that must be resolved
13 before a determination of disability can be made, and (3) it is clear from the
14 record that the ALJ would be required to find the claimant disabled were such
15 evidence credited.

16 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

17 The Court has determined, on remand, the ALJ must re-evaluate the medical opinion
18 evidence and Plaintiff’s subjective symptom testimony to determine if Plaintiff is capable of
19 performing jobs existing in significant numbers in the national economy. Therefore, there are
20 outstanding issues which must be resolved and remand for further administrative proceedings is
21 appropriate.

22 **CONCLUSION**

23 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
24 Plaintiff was not disabled. Accordingly, Defendant’s decision to deny benefits is reversed and

1 this matter is remanded for further administrative proceedings in accordance with the findings
2 contained herein.

3 Dated this 23rd day of July, 2018.

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6 David W. Christel
7 United States Magistrate Judge
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